

was a principle of right and justice inherent in the nature and spirit of the social compact, which restrained and set bounds to the authority of the legislature, and beyond which it could not be allowed to pass. That principle which protects the life, liberty and property of the citizen from violation in the unjust exercise of legislative power. *Regents of the University of Maryland vs. Williams*, 9 G. & J., 409.

Chancellor Kent, in speaking of the right of eminent domain, or that inherent sovereign power which gives to the legislature the control of private property for public uses, remarks, that the constitution of the United States, and of most of the states of the Union have imposed a valuable check upon the exercise of the power, by declaring, that private property shall not be taken for public use, without just compensation; a principle, as he says, founded in natural justice and recognised by the universal law. And, he further observes, "that though it be not a constitutional principle, yet it exists with stringent force, independent of any positive provision." 2 *Kent Com.*, 339, 340, and note.

The only case to which I have been referred, in which it was held, that private property might be taken for public use, against the consent of the owner, and without making compensation, is that of the *State vs. Dawson*, 3 *Hill's Rep.*, 100. This decision was placed upon the ground, that the 5th article of the constitution of the United States, which prohibits the taking of private property for public use, without just compensation, is applicable, exclusively, and restrictive only of the powers of the general government and its functionaries; and, that as there is no restraining provision in the constitution of South Carolina, the legislative authority could not be controlled.

The weight of this authority, however, is much weakened by the dissatisfaction with it, expressed by several of the judges, and by the opinion of Mr. Justice Richardson, in support of the obligation of making compensation.

But, if it should be conceded, that the legislature of Maryland might exercise the power in question, if there was nothing in the constitution to forbid it; and, if the argument pressed